Chapter 4: Jurisdiction, Venue, & Transfer

4

In this chapter. . .

This chapter outlines the authority of the Family Division of Circuit Court to act when child abuse or child neglect is alleged against a parent, guardian, nonparent adult, or legal custodian. The chapter begins by distinguishing subject matter jurisdiction, which deals with a court's authority to hear cases of a given type, and personal jurisdiction, which deals with a court's authority to enter orders in a given case. The Family Division's assumption of subject matter jurisdiction may occur after a preliminary hearing if the court finds that the allegations fall within the statutory bases in MCL 712A.2(b) and probable cause that at least one of the allegations in the petition is true. The Family Division's ability to exercise personal jurisdiction over a child depends upon whether the allegations against a parent, guardian, nonparent adult, or legal custodian fall within the statutory bases for jurisdiction in MCL 712A.2(b) and are proven at a trial or by plea. This chapter sets forth those statutory bases and case law interpreting them. The chapter also discusses procedures for handling a case involving a child

who is subject to the jurisdiction of another Michigan court or a court of another state. It also contains a description of the procedures for transferring a case from a Michigan county where a child is found to the child's county of residence.

4.1 Subject Matter Jurisdiction and Personal Jurisdiction

Distinguishing subject matter and personal jurisdiction. A court's assumption of subject matter jurisdiction should be distinguished from the court's exercise of jurisdiction over the child. Subject matter jurisdiction is a court's authority to exercise judicial power over a particular class of cases (e.g., child protection cases). Jurisdiction over a child may be exercised only after the court makes a determination regarding the specific facts of a case. *In re AMB,* 248 Mich App 144, 166 (2001). Jurisdiction over the child, "personal jurisdiction," may be established only after parties have received proper notice and the finder of fact determines that the child comes within the court's jurisdiction under MCL 712A.2(b). MCL 712A.18(1) and MCR 3.972(E). In *In re Hatcher,* 443 Mich 426, 437 (1993), the Michigan Supreme Court found that subject matter jurisdiction is established if

> "the action is of a class that the court is authorized to adjudicate, and the claim stated in the complaint is not clearly frivolous. The valid exercise of the [Family Division's] statutory jurisdiction is established by the contents of the petition after the [Family Division] judge or referee has found probable cause to believe that the allegations contained within the petitions are true."*

*This probable cause determination occurs at a preliminary inquiry or a preliminary hearing. See Sections 6.7 and 7.11.

Subject matter jurisdiction. Prior to January 1, 1998, the juvenile division of the probate court had "original jurisdiction in all cases of juvenile . . . dependents, except as otherwise provided by law." Const 1963, art 6, §15. "Dependency" may be used to describe a child who falls within the Family Division's jurisdiction of child protective proceedings. A "dependent child" is "any child who for any reason is destitute or homeless or abandoned or dependent upon the public for support, or who has not proper parental care or guardianship...." *In re Curry,* 113 Mich App 821, 825 (1982), quoting 1909 PA 310, a predecessor to the current Juvenile Code.

Effective January 1, 1998, the newly created Family Division of the Circuit Court was assigned subject matter jurisdiction over child protective proceedings. MCL 600.1001 and MCL 600.1021(1)(e). Except as otherwise provided by law, the Family Division now has sole and exclusive jurisdiction over cases involving juveniles commenced on or after January 1, 1998. MCL 600.601(4) and MCL 712A.2(b).

> **Note:** MCL 600.1009 states that a reference to the former juvenile division of the probate court in any statute shall be

construed as a reference to the family division of circuit court. See also MCR 3.903(A)(4) ("court" means Family Division of the Circuit Court when used in court rules).

"Case" defined. MCR 3.903(A)(1) defines "case" as follows:

> "'Case' means an action initiated in the family division of circuit court by:
>
> (a) submission of an original complaint, petition, or citation;*
>
> (b) acceptance of transfer of an action from another court or tribunal;* or
>
> (c) filing or registration of a foreign judgment or order."*

*See Chapter 6.

*See Sections 4.19–4.21, below.

*See Section 4.15, below, for discussion of interstate cases.

"**Child protective proceeding" defined.** A "child protective proceeding" is a proceeding concerning an "offense against a child." MCR 3.903(A)(2). "'Offense against a child' means an act or omission by a parent, guardian, nonparent adult, or legal custodian asserted as grounds for bringing the child within the jurisdiction of the court pursuant to the Juvenile Code." MCR 3.903(C)(7). However, child protective proceedings are not criminal proceedings. MCL 712A.1(2). See, generally, *People v Gates,* 434 Mich 146, 161–65 (1990) (because the purposes of criminal and child protective proceedings differ, application of collateral estoppel to bar a criminal proceeding after a jury has found that a child does not come within the court's jurisdiction in a child protective proceeding would be contrary to public policy).

Ancillary jurisdiction of guardianship proceedings. The Family Division also has ancillary jurisdiction of guardianship proceedings under Article 5 of the Estates and Protected Individuals Code (EPIC), MCL 700.5101 et seq. MCL 600.1021(2)(a).*

*See Sections 4.12, below, and 13.9(D).

Subject matter jurisdiction under the Safe Delivery of Newborns Law. The Family Division has jurisdiction over a newborn child who has been surrendered to an emergency service provider as provided in the Safe Delivery of Newborns Law. MCL 712.1(2)(b) and MCL 712.2(1).*

*See Section 3.8.

Personal jurisdiction. On the other hand, a determination that the Family Division has jurisdiction over a child is made following a plea or trial.* *In re Brock,* 442 Mich 101, 108–09 (1993), MCR 3.903(A)(26) ("'[t]rial' means the fact-finding adjudication of an authorized petition to determine if the minor comes within the jurisdiction of the court"), and MCL 712A.18(1) (if a court finds that a child is within its jurisdiction under the Juvenile Code, the court may enter a dispositional order). See Section 4.2, below, for a list of the statutory bases for jurisdiction. In addition, once a court establishes personal jurisdiction over a child, it has authority to enter orders concerning

*Pleas are discussed in Chapter 10; trials are discussed in Chapter 12.

the child's parents and other adults. See Section 4.17, below, for a discussion of this authority.

Taking personal jurisdiction over a child when the court has adjudicated the allegations against only one parent. In *In re CR,* 250 Mich App 185 (2002), the DHS filed a petition alleging that the mother had abused and neglected her children, and that both the mother and father had criminal histories that forced the children to occasionally reside with relatives. The parents and DHS reached an agreement whereby the DHS would dismiss the allegations against the father, the mother would enter a no-contest plea to the allegations in an amended petition, the court would take jurisdiction over the children, and the children would be placed with the father subject to his participation in drug testing and other services. The trial court accepted the mother's plea and dismissed the petition as it related to the father. Both parents failed to comply with parent-agency agreements, which were incorporated into orders of disposition, and the DHS filed a supplemental petition requesting termination of both parents' parental rights. *Id.* at 187-91. The trial court terminated both parents' rights. *Id.* at 193-94.

On appeal, the father argued that the trial court erred by terminating his rights because it did not conduct an adjudication with respect to him, and that the trial court violated his due-process right to notice of charges by not conducting an adjudicative hearing prior to the termination hearing.

In rejecting the father's first argument, the Court of Appeals explained that the court rules governing child protective proceedings do not require that the trial court conduct an adjudication with regard to each parent before taking jurisdiction over a child and entering dispositional orders affecting a parent who did not have an adjudicative hearing. A respondent is entitled to an adjudicative hearing or trial, at which the petitioner must prove by a preponderance of the legally admissible evidence that a child comes within MCL 712A.2(b). *CR, supra* at 200, citing MCR 5.972(C)(1).* However, once the court acquires jurisdiction over the child, it may hold a dispositional hearing "to determine measures to be taken . . . against any adult . . . ." *CR, supra* at 202, quoting MCR 5.973(A). See also MCL 712A.6. The court may order compliance with a case service plan and enter other orders it considers necessary to protect the child's interest. *CR, supra* at 202, citing MCR 5.973(A)(5)(b). Thus, after the trial court determined that the children were within its jurisdiction based on the mother's no-contest plea, the trial court could enter orders affecting the father. The Court of Appeals concluded that the petitioner was not required to allege and demonstrate by a preponderance of the legally admissible evidence that the father was abusive or neglectful under MCL 712A.2(b) before entering orders controlling or affecting his conduct. *CR, supra* at 203. The trial court was obligated in this situation, however, to utilize only legally admissible evidence to establish a statutory ground to terminate the father's parental rights. *Id.,* citing MCR 5.974(E).

*The applicable court rules have been amended since the *CR* case was decided. See Subchapter 3.900.

The Court of Appeals also rejected the father's argument that, due to the trial court's failure to hold an adjudicative hearing, he was deprived of his procedural due-process right to notice of the allegations underlying the request for termination. Specifically, the father argued "that the family court did not hold an adjudication of his rights at the outset of this protective proceeding and then used hearsay evidence adduced in subsequent dispositional review hearings conducted while he was not a respondent when terminating his rights." *CR, supra* at 205.

The Court of Appeals stated as follows:

> "As we have explained, the court rules simply do not place a burden on a petitioner like the FIA to file a petition and sustain the burden of proof at an adjudication with respect to every parent of the children involved in a protective proceeding before the family court can act in its dispositional capacity. The family court's jurisdiction is tied to the children, making it possible to terminate parental rights even of a parent who, for one reason or another, has not participated in the protective proceeding under proper circumstances. n43
>
> ---
>
> n43 See, e.g., MCL 712A.19b(3)(a) (permitting termination when the parent is unidentifiable, has deserted the child, or has surrendered the child).
>
> ---
>
> "The termination proceeding in this case exemplifies the problem of holding an adjudication against only one parent and then proceeding to terminate two parents' parental rights at the same proceeding. This process can be quite confusing. The parent who has been subject to an adjudication, like Bowman, can have her parental rights terminated on the basis of all the relevant and material evidence on the record, including evidence that is not legally admissible. In contrast, the petitioner must provide legally admissible evidence in order to terminate the rights of the parent who was not subject to an adjudication, like Richardson. Notably, Richardson does not specifically contest the constitutional validity of MCR 5.974(E) and (F), the two subrules that permit these differing evidentiary standards at the termination hearing." *CR, supra* at 205-06.

Although the Court of Appeals noted that several witnesses did present hearsay testimony at the termination hearing, it found that the trial court did

not err in finding adequate legally admissible evidence to terminate the father's parental rights. *Id.* at 206-08. More importantly, the father was involved in many of the dispositional phase hearings and was represented by court-appointed counsel at those hearings. The father received the supplemental petition requesting termination of his parental rights. *Id.* at 208-09.

In *In re Bechard,* 211 Mich App 155 (1995), the petition alleged that the respondent-father sexually abused one of his children but contained no allegations against the children's mother. At a preliminary inquiry, the father refused to enter a plea and requested an attorney. The mother then "consented to the court's jurisdiction." The court proceeded to conduct a dispositional hearing and terminated the respondent-father's parental rights. *Id.* at 157-58. The Court of Appeals set aside the order terminating the respondent-father's parental rights and remanded the case to the trial court for an adjudicative hearing. The Court of Appeals first rejected the petitioner's argument that the father was barred from collaterally attacking the trial court's adjudicative order, finding that no adjudicative order could have been entered since the trial court only conducted a preliminary inquiry before proceeding to the termination hearing. The Court of Appeals then found that the father was entitled to an adjudicative hearing on the petition. Because the petition contained no allegations against the mother, she could not "consent to the court's jurisdiction" over the children or plead to the allegations in the petition. *Id.* at 160-61.

Constitutional rights of parents to the care, custody, and control of their children. If allegations of abuse or neglect by one parent were not contained in a petition or not proven by a preponderance of the legally admissible evidence at an adjudicative hearing, that parent may be entitled to custody of a child involved in the proceeding. Parents have a fundamental liberty interest in the care, custody, control, and upbringing of their children. *Troxel v Granville,* 530 US 57, 65-66 (2000). Parents are entitled to procedural due process before they are denied this fundamental liberty interest by the state. *Santosky v Kramer,* 455 US 745, 753 (1982), and *In re Vasquez,* 199 Mich App 44, 46-47 (1993). A court may not presume that an unwed father is an unfit parent. All parents "are constitutionally entitled to a hearing on their fitness before their children are removed from their custody." *Stanley v Illinois,* 405 US 645, 658 (1972).

4.2 Statutory Bases of Personal Jurisdiction

MCL 712A.2(b)(1)–(4) of the Juvenile Code provides that the Family Division has personal jurisdiction over any child under 18 years of age found within the county:

- Whose parent or other person legally responsible for the care and maintenance of the child, when able to do so, neglects or refuses

to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals;

Note: "'Education' means learning based on an organized educational program that is appropriate, given the age, intelligence, ability, and any psychological limitations of a juvenile, in the subject areas of reading, spelling, mathematics, science, history, civics, writing, and English grammar." MCL 712A.2(b)(1)(A).

Home schooling may satisfy the requirements enumerated above for an educational program sufficient to avoid an allegation of "educational neglect." See MCL 380.1561(3)(f). Moreover, because it is often difficult to distinguish between "educational neglect" and "truancy," a preliminary inquiry may be held to determine whether to proceed under the child protective proceedings provisions or the delinquency proceedings provisions of the Juvenile Code. See MCL 712A.2(a)(4)(jurisdiction over truants).

- who is subject to a substantial risk of harm to his or her mental well-being;
- who is abandoned by his or her parents, guardian, or other custodian;
- who is without proper custody or guardianship;

Note: "'Without proper custody or guardianship' does not mean a parent has placed the juvenile with another person who is legally responsible for the care and maintenance of the juvenile and who is able to and does provide the juvenile with proper care and maintenance." MCL 712A.2(b)(1)(B).

- whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult,* or other custodian, is an unfit place for the child to live;
- whose parent has substantially failed, without good cause, to comply with a limited guardianship placement plan described in MCL 700.5205 regarding the child; or
- whose parent has substantially failed, without good cause, to comply with a court-structured guardianship placement plan described in MCL 700.5207 or MCL 700.5209 regarding the child.*

*See Section 4.3, below, for a definition of "nonparent adult."

*See Section 4.12, below, for a discussion of the court's authority to take jurisdiction over a child following the appointment of a guardian.

In addition, MCL 712A.2(b)(5) provides that the Family Division has personal jurisdiction over a child under 18 years of age if the child has a guardian under EPIC and the child's parent meets both of the following criteria:

- the parent, having the ability to support or assist in supporting the child, has failed or neglected, without good cause, to provide regular and substantial support for the child for two years or

more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for two years or more before the filing of the petition; and

- the parent, having the ability to visit, contact, or communicate with the child, has regularly and substantially failed or neglected, without good cause, to do so for two years or more before the filing of the petition.

In protective proceedings, jurisdiction cannot be conferred on the Family Division by consent of the parties. *In re Youmans,* 156 Mich App 679, 684 (1986). A determination that the Family Division has jurisdiction over the child pursuant to MCL 712A.2(b) is made following a plea or trial. See MCL 712A.18(1).

After it is determined that the children are within the court's jurisdiction under MCL 712A.2(b), the court has the authority to conduct a hearing to determine whether parental rights to the child should be terminated. See MCL 712A.19b and *In re Taurus F,* 415 Mich 512, 526, 527 (1982).

The Court of Appeals has held that both the jurisdiction and the termination statutes are not unconstitutionally vague. *In re Gentry,* 142 Mich App 701, 707 (1985).

4.3 Definition of "Nonparent Adult"

A "nonparent adult" is a person 18 years old or older who, regardless of the person's domicile, meets all of the following criteria in relation to a child over whom the court takes jurisdiction under MCL 712A.2(b):

- the person has substantial and regular contact with the child;
- the person has a close personal relationship with the child's parent or with a "person responsible for the child's health or welfare"; and
- the person is not the child's parent or a person otherwise related to the child by blood or affinity to the third degree.

MCL 712A.13a(1)(h)(*i*)–(*iii*). MCR 3.903(C)(6) contains a substantially similar definition. A "nonparent adult" may be a "person responsible for a child's health or welfare," thereby subjecting him or her to investigation by the Department of Human Services (DHS) regarding suspected child abuse or child neglect. See Section 2.1(C). A court may order a "nonparent adult" out of a child's home (see Sections 7.13–7.15), and to comply with a Case Service Plan (see Section 13.10).

4.4 Temporary Neglect Is Sufficient for Court to Take Jurisdiction

The Michigan Supreme Court has attempted to set forth the quantum of neglect necessary for a trial court to take temporary and permanent custody* of a child:

> "[W]e hold that, while evidence of temporary neglect may suffice for entry of an order taking temporary custody, the entry of an order for permanent custody due to neglect must be based upon testimony of such a nature as to establish or seriously threaten neglect of the child for the long-run future." *Fritts v Krugh,* 354 Mich 97, 114 (1958).

*A court may take temporary custody of a child at disposition. A court may take permanent custody of a child following termination of all parental rights. See MCL 712A.20.

In *Fritts,* the father left his wife and their two children following an argument. The mother testified that her husband left them a small amount of money, but that she had to borrow money temporarily for milk for the children. Two weeks later the mother initiated voluntary adoption proceedings. Before any hearing on the petition occurred, but after the children were placed in foster care, the parents reconciled and sought to reclaim their children. The trial court terminated parental rights, but the Michigan Supreme Court reversed, finding that the proofs did not support even the assumption of temporary jurisdiction over the children. *Id.* at 101–09, 114–15.

4.5 Parental Culpability Is Not Required for Court to Take Jurisdiction of a Child Because of an Unfit Home

In *In re Jacobs,* 433 Mich 24, 33–34 (1989), the Court distinguished between "neglect" as defined in MCL 712A.2(b)(1), which, by its terms, requires parental culpability, and "neglect" as defined in MCL 712A.2(b)(2), which does not require culpability. Under §2(b)(1), a parent or other person legally responsible for the care and maintenance of a child must be able to provide proper or necessary support or care and neglect or refuse to do so.* For example, in *In re Kurzawa,* 95 Mich App 346, 354–57 (1980), the Court of Appeals held that culpability is required for the trial court to take jurisdiction of a child for "emotional neglect." Under §2(b)(2), however, the child's home may be unfit without a finding that the parent is to blame for that unfitness. Culpable neglect is not required in cases involving allegations of an unfit home since the purpose of the Juvenile Code is to protect children from such homes, "not to punish bad parents." *Jacobs, supra,* at 41, quoting *In re Sterling,* 162 Mich App 328, 339 (1987). In *Jacobs,* the mother of two children suffered a stroke that left her physically impaired and unable to establish a permanent home for the children, and jurisdiction was taken under §2(b)(2).

*But see MCL 712A.19b (3)(g), which expressly excludes consideration of intent when deciding whether parental rights should be terminated for failure to provide proper care or custody for the child. See Section 18.24 for a discussion of this provision.

4.6 Anticipatory Neglect or Abuse Is Sufficient for Court to Take Jurisdiction of a Newborn Child

Although the Family Division may not assert jurisdiction over an unborn child, the doctrine of "anticipatory neglect or abuse" may allow the court to assume jurisdiction of the case immediately after the birth of a child. In *In re Dittrick,* 80 Mich App 219, 222–23 (1977), the mother's parental rights to her first child were terminated due to physical and sexual abuse. Just prior to the termination hearing, the mother became pregnant again, and the Department of Social Services (now the Department of Human Services) petitioned the court to take jurisdiction before the baby was born. The Court of Appeals found that the probate court could not assume jurisdiction over an unborn person, as it is not a "child" for purposes of MCL 712A.2(b). However, the neglect or abuse of a previous child provides a sufficient basis for assuming jurisdiction of a case involving a current child. The Court stated:

> "Defendants first argue that the probate court could not find neglect and order a change of custody based on allegations that they had abused defendant Carol Dittrick's first child. *In the Matter of LaFlure,* 48 Mich App 377; 210 N.W. 2d 482 (1973), properly answers and rejects this argument. Defendants attempt to distinguish *LaFlure* by arguing that it permits a finding of anticipated future neglect of a second child where a finding of past neglect of the second child has already been made. We reject that distinction because we believe that the reasoning of *LaFlure* is sound, even when applied to a situation where no prior determination of neglect has been made." *Dittrick, supra* at 222.

In *In re Baby X,* 97 Mich App 111, 116 (1980), the Court, citing *Dittrick, supra,* held that a newborn suffering from symptoms of narcotics withdrawal could be considered a neglected child within the subject matter jurisdiction of the probate court.*

*See also Section 2.5 (presence of controlled substance in newborn's body is "reasonable cause to suspect" child abuse).

Termination of parental rights to previous child. The DHS must file a petition seeking termination of parental rights at an initial disposition hearing if a parent has previously had his or her parental rights to another child terminated, there is a risk of harm to a current child, and the parent has failed to eliminate that risk. MCL 722.638. Three subsections of MCL 712A.19b(3) allow for termination of parental rights based on a prior termination of parental rights. See Sections 2.22, 18.26, 18.29, and 18.30. In *In re Futch,* 144 Mich App 163, 166–68 (1984), the Court of Appeals held that evidence that respondents were convicted of manslaughter in the beating death of respondent-mother's first child supported assumption of jurisdiction over and termination of respondents' parental rights to a subsequent child. "This Court has not required that neglect or abuse of a

specific child must be shown as a prerequisite to jurisdiction." *Id.* at 168, citing *Dittrick, supra* and *LaFlure, supra.*

In *In re Gazella*, 264 Mich App 668, 679–81 (2005), the Court of Appeals held that where respondent's parental rights to previous children were involuntarily terminated based upon abandonment and her parental rights to other previous children were voluntarily terminated after child protective proceedings were initiated, it was not error for the court to find jurisdiction based upon the doctrine of anticipatory neglect. The Court rejected the mother's argument that "[p]ast conduct is not a statutory ground for asserting jurisdiction, there must be some current physical harm or threat of serious emotional harm." *Id.* at 680, quoting *Dittrick, supra* and *Powers, infra*.

In *In re McCoy,* unpublished opinion per curiam of the Court of Appeals, decided April 18, 2000 (Docket No. 217459), the Court of Appeals held that the trial court did not err in taking judicial notice of its file from a previous termination of parental rights proceeding in order to establish jurisdiction over the current children. Moreover, in a footnote, the Court of Appeals asserted that "[t]he fact that respondent-appellant's parental rights to three older children had been involuntarily terminated for neglect was sufficient to support the trial court's assumption of jurisdiction over the minor children." *Id.,* citing *Dittrick, supra, In re Powers,* 208 Mich App 582 (1995), *Baby X, supra,* and *LaFlure, supra.*

4.7 Case Law Defining Culpable Failure or Refusal to Provide Support or Care ("Neglect")

The following cases construe that portion of §2(b)(1) of the Juvenile Code that allows for assumption of jurisdiction when a parent or other person legally responsible for the care and maintenance of a child is able to provide proper or necessary support or care and neglects or refuses to do so. See *In re Sterling,* 162 Mich App 328, 338–39 (1987), for an explanation of the importance of the phrase "when able to do so." It is apparent that this phrase refers to a parent's financial ability to provide support and care rather than the parent's physical ability to do so.

- *In re Waite,* 188 Mich App 189, 195 (1991): where the child's parent placed the child in the temporary care of a friend who had two children of her own, and where the child was injured while in the friend's custody, the trial court erred in finding sufficient facts to support taking jurisdiction of the child.

- *In re Nash,* 165 Mich App 450, 456 (1987): where the parent appeared to be intoxicated during visits by social workers, threatened the children, failed to provide adequate food, where the children were previously made temporary wards for

educational neglect, and where one child showed symptoms of drug withdrawal soon after birth, the trial court properly found that sufficient evidence was presented to support taking jurisdiction of the children.

- *In re Adrianson,* 105 Mich App 300, 311–15 (1981): where the parent failed to provide adequate medical care, the children had poor school attendance, and the parent was incarcerated for a short period, the trial court properly took jurisdiction; however, allegations that there was debris on the front porch and that the parent had a "personality conflict" with one child were insufficient by themselves to establish jurisdiction.

- *In re Franzel,* 24 Mich App 371, 373–75 (1970): where the mother showed a marked preference for her older child, which led to her failure to meet the physical and emotional needs of the younger child, the evidence was sufficient to find the younger child within the court's jurisdiction.

4.8 Case Law Defining "Substantial Risk of Harm" to a Child's Mental Well-Being ("Emotional Neglect")

The following cases construe that part of §2(b)(1) of the Juvenile Code that allows the court to take jurisdiction over a child who is "subject to substantial risk of harm to his or her mental well-being."

- *In re SR,* 229 Mich App 310, 315 (1998): after the father attempted to kill the child and commit suicide, he was found guilty of second-degree child abuse and sentenced to prison. The Court of Appeals held that the lower court erred in refusing to assume jurisdiction on the basis of a substantial risk of harm to the child's mental well-being. The Court stated that the parent's incarceration does not eliminate the emotional impact on the child of the previous events.

- *In re Middleton,* 198 Mich App 197, 199–200 (1993): the mother was developmentally disabled and under plenary guardianship. Under the Mental Health Code, a plenary guardian may be appointed only where a court finds "by clear and convincing evidence that the respondent is developmentally disabled and is *totally without capacity to care for himself or herself* . . . ." The Court of Appeals held that, in such circumstances, the mother's status, by itself, gave rise to the presumption that her newborn daughter was both at "substantial risk of harm to . . . her mental well-being" and "without proper custody or guardianship."

- *In re Arntz,* 125 Mich App 634, 637–38 (1983), rev'd on other grounds 418 Mich 941 (1984): in 1979, the respondent placed her two children with their paternal grandparents and had the grandparents appointed as legal guardians. In 1981, respondent dissolved the guardianship and attempted to have her children returned to her. The Department of Social Services (now the Department of Human Services) then filed a child protective proceedings action against respondent, alleging emotional neglect.* The Court of Appeals found that the assumption of jurisdiction was proper because the mother's failure to visit during the guardianship temporarily deprived the children of emotional well-being. See also *In re Mathers,* 371 Mich 516, 527–29 (1963) (failure of parents to visit for one year or provide support sufficient to establish jurisdiction).

*At the time of this case, the Legislature had not yet enacted the statutory section that permits the court to take jurisdiction on the grounds that a parent has failed to substantially comply with a limited guardianship placement plan. See Section 4.12, below.

- *In re Kurzawa,* 95 Mich App 346, 354–57 (1980): the petitioner alleged that respondents' five-year-old child was deprived of his emotional well-being by the parents' failure to control the child's violent and antisocial behavior. The Court of Appeals found that the allegation did not constitute neglect, as the court below based its assumption of jurisdiction on the behavioral problems and treatment needs of the child rather than the parents' culpability in failing to provide for the emotional well-being of the child.

4.9 Case Law Defining "Abandonment"

The following cases construe that portion of §2(b)(1) of the Juvenile Code that allows the court to take jurisdiction over a child who is abandoned by his or her parents.

- *In re Nelson,* 190 Mich App 237, 240–41 (1991): the Court found that the mother's leaving the child with a grandparent without providing for the child's support was insufficient to allow assumption of jurisdiction. Instead, placing a child with a relative who will provide proper care evidences concern for the child's welfare.*

*But see Section 4.10, below, for a discussion of the requirements for leaving a child in the temporary custody of a relative.

- *In re Youmans,* 156 Mich App 679, 685 (1986): a mother's statement that she had left home and would not return was insufficient to establish abandonment by both parents, as there was no evidence presented that the father would be unable to care for the children.

4.10 Case Law Defining "Without Proper Custody or Guardianship"

The following cases construe that portion of §2(b)(1) of the Juvenile Code that allows the court to take jurisdiction over a child who is "without proper custody or guardianship."

Placement of the child by the parent with another person who is legally responsible for the care and maintenance of the child and who provides the child with proper care and maintenance does not establish that the child is "without proper custody or guardianship." MCL 712A.2(b)(1)(B). Such placement is often in the home of a relative. See *In re Nelson,* 190 Mich App 237, 241 (1991), *In re Ward,* 104 Mich App 354, 358–60 (1981), and *In re Curry,* 113 Mich App 821, 823–26 (1982).

> **Note:** In *In re Taurus F,* 415 Mich 512 (1982), the Michigan Supreme Court attempted to define "proper custody," but the case contains no majority opinion. The Court's decision in *Taurus F* was prior to the addition of the current statutory definition in MCL 712A.2(b)(1)(B). After *Taurus F,* the Michigan Legislature amended MCL 712A.2(b)(1) to add sub-subsection (B), which states that "'[w]ithout proper custody or guardianship' does not mean a parent has placed the juvenile with another person who is legally responsible for the care and maintenance of the juvenile and who is able to and does provide the juvenile with proper care and maintenance."

- *In re Systma,* 197 Mich App 453 (1992): respondent-father had not kept in contact with his child for several years after respondent's divorce from the child's mother. The mother became very ill and was admitted into a hospital. Because the respondent was in prison at the time, the mother contacted the Department of Social Services (now the Department of Human Services) and voluntarily placed her child in foster care. The DSS temporarily placed the child with relatives until the mother died two weeks later. The DSS then filed a petition in juvenile court, asking for jurisdiction on the ground that the child was "without proper custody or guardianship." The Court of Appeals affirmed the granting of jurisdiction, and held that although temporary placement with a relative is "proper custody," it is only so when the respondent-parent placed the child with the relative. Thus, the father could not argue that custody was proper. Also, the legal requirements for creating a guardianship had not been met in this case.

- *In re Webster,* 170 Mich App 100, 105–06 (1988): the Department of Social Services (now the Department of Human Services) filed a neglect petition against respondent, an unwed mother, alleging that respondent's one-year-old child was

"without proper custody or guardianship." On the same date that the petition was filed, respondent executed a power of attorney delegating her parental powers to the natural father of the child. The natural father had lived with the mother and their child since the child's birth but had not acknowledged paternity. The Court of Appeals affirmed the Probate Court's assumption of jurisdiction, holding that the execution of the power of attorney did nothing to change the child's environment, and that the child was still "without proper custody or guardianship."

Note: A minor child's parent or guardian may delegate any of his or her powers regarding the child's care, custody, or property to another person by properly executing a power of attorney. A power of attorney is revocable at will and expires after six months. MCL 700.5103(1). Execution of a power of attorney does not divest the Probate Court of subject matter jurisdiction of guardianship proceedings. *In re Martin,* 237 Mich App 253, 256 (1999), citing *Webster, supra.*

- *In re Pasco,* 150 Mich App 816, 822–23 (1986): where the mother abandoned her seriously ill infant in a hospital, three months later suggesting that the child's grandmother care for the infant during the day while the mother attended school, the court did not err in taking jurisdiction of the child.

- *In re Hurlbut,* 154 Mich App 417, 421–22 (1986): respondent-father, who was serving a life sentence in prison for first-degree murder, appealed the termination of his parental rights to a three-year-old child, whom he had never seen. Respondent argued that the Probate Court improperly assumed jurisdiction after the child's mother died because the mother had named a testamentary guardian in her will. Therefore, the respondent argued, the child was not "without proper custody or guardianship" at the time of the mother's death. The Court of Appeals disagreed, holding that no proper guardianship was established, as a testamentary guardianship requires both parents to be deceased or the surviving parent to be legally incapacitated. Nor did the named guardians petition for "full" guardianship prior to the mother's death.

- *In re Ernst,* 130 Mich App 657, 662–64 (1983): where the parent failed to make specific arrangements regarding the child's care, or to maintain contact with or be accessible to the grandparent with whom the child was placed, the court did not err in taking jurisdiction over the child.

4.11 Case Law Defining "Unfit Home Environment"

The following cases construe §2(b)(2), which allows for assumption of jurisdiction if the child's home is unfit without a finding that the parent is to blame for that unfitness.

- *In re Jacobs,* 433 Mich 24, 33–34 (1989): where respondent-mother suffered a stroke that severely limited her ability to care for the children, and where the children's father was caring for and living with his mother, who was recovering from surgery, the trial court did not err in taking jurisdiction over the children.
- *In re Brimer,* 191 Mich App 401, 408 (1991): where the mother's boyfriend's physical and sexual abuse of the mother's child rendered the home unfit, the trial court did not err in taking jurisdiction over the mother's child.
- *In re Miller,* 182 Mich App 70, 74, 82 (1990): where the children's mother returned to the home with the children from a domestic assault shelter after father had beaten the children, and where neither parent sought needed medical attention for one child, the trial court did not err in taking jurisdiction of the children.
- *In re Brown,* 171 Mich App 674, 677–78 (1988): where the evidence showed that one of respondent's children had been physically beaten, the trial court did not err in taking jurisdiction over all of respondent's children on grounds that their home was unfit.
- *In re Youmans,* 156 Mich App 679, 685 (1986): where the evidence showed that the home was dirty, that the children suffered severe diaper rash, and that one child got into a container of valium, the trial court erred in taking jurisdiction of the children.
- *In re Curry,* 113 Mich App 821, 827–30 (1982): where both parents were in prison, but where the children were in the custody of their grandparents, the parents' status as convicted criminals alone was insufficient to support taking jurisdiction.
- *In re Brown,* 49 Mich App 358, 365 (1973): where the mother engaged in a lesbian relationship without evidence that the relationship rendered the children's home environment unfit, the allegations were insufficient to establish jurisdiction.

A criminal conviction is not a prerequisite to the court's assumption of jurisdiction on grounds that a parent's "criminality" renders a child's home environment unfit. *In re Unger*, 264 Mich App 270, 279 (2004). In *Unger*, the respondent-father is suspected of murdering his wife, the mother of their

two children, but had not been charged with or convicted of the murder at the time a petition was filed in a child protective proceeding. The Court of Appeals held that proving "criminality" did not require a prior "conviction": the petitioner must only demonstrate that the "respondent engaged in criminal behavior by a preponderance of the evidence." *Id*.

The respondent-father in *Unger* also argued that a finding of criminality based upon the death of the children's mother, in the absence of a criminal conviction, violated his due process rights. The trial court agreed with the respondent-father and prohibited the petitioner from introducing evidence of the alleged murder at the trial. On appeal, the Court of Appeals indicated that during the adjudicative phase of child protective proceedings the parent's liberty interest at stake is the interest in managing his children and the governmental interest at stake is the child's welfare. The Court of Appeals overturned the trial court's findings and stated:

> "Rather than appropriately balancing the factors stated in *Mathews* [*v Eldridge*, 424 US 319, 335 (1976)], the trial court focused on the harm the children would suffer if deprived of their father and the potential bias respondent might incur in the subsequent criminal proceedings. As stated above, however, the children's interest in maintaining a relationship with their father exists only to the extent that it would not be harmful to them. [*In re*] *Brock*, [442 Mich 101, 113 n 19 (1993)]. Their welfare is of utmost importance in these proceedings, *Id*. at 115, and due process is not offended by determining whether the trial court has jurisdiction to decide whether their relationship with their father should continue. Procedural due process seeks to protect them from an *erroneous* termination of their relationship with their father, not a statutorily proper termination. See *Brock, supra* at 113." *Unger, supra* at 282.

The Court of Appeals indicated that the trial court provided no specific reason for excluding evidence of the murder, suggesting only that evidence of the murder would violate the respondent's due process rights. The Court of Appeals reversed and stated "whether respondent killed [the children's mother] is highly relevant to the issue whether 'criminality' renders the children's home or environment unfit." *Id.* at 284.

4.12 Court's Authority to Take Jurisdiction Over a Child Following the Appointment of a Guardian

*The Indian Child Welfare Act applies to guardianships. See Chapter 20.

The Probate Court has jurisdiction of guardianship proceedings and may appoint a "full" or "limited" guardian for a child. MCL 600.841(1)(a) and MCL 700.1302(c).* The Probate Court has the authority to order a court-structured guardianship placement plan and to agree to a limited guardianship placement plan. See MCL 700.5205(2), MCL 700.5206(1), and MCL 700.5207(3)(b).

*See Section 4.10, above, for a discussion of Family Division jurisdiction over children who are "without proper custody or guardianship." Note that a court-ordered guardianship is not required for a child to be in the "proper custody" of a person other than a parent.

There are three different statutory bases for jurisdiction that may be asserted following the appointment of a guardian for a child.* They are:

- a parent has substantially failed, without good cause, to comply with a limited guardianship placement plan described in MCL 700.5205 regarding the child. MCL 712A.2(b)(3);

- a parent has substantially failed, without good cause, to comply with a court-structured guardianship plan described in MCL 700.5207 or MCL 700.5209 regarding the child. MCL 712A.2(b)(4); or

- a parent has placed a child with a guardian and the parent meets both of the following criteria:

  — the parent, having the ability to support or assist in supporting the child, has failed or neglected, without good cause, to provide regular and substantial support for the child for two years or more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for two years or more before the filing of the petition; and

  — the parent, having the ability to visit, contact, or communicate with the child, has regularly and substantially failed or neglected, without good cause, to do so for two years or more before the filing of the petition. MCL 712A.2(b)(5).

When a petition is filed in Probate Court to terminate a "full" or "limited guardianship" for a parent's failure to comply with a placement plan, the court may appoint an attorney to represent the minor child or refer the matter to DHS, and the attorney or DHS may file a complaint seeking Family Division jurisdiction under MCL 712A.2(b). MCL 700.5209(2)(d). The attorney or DHS must report to the Probate Court within 21 days after appointment. MCR 5.404(E)(3). The guardianship terminates upon authorization of a petition under MCL 712A.11, unless the Family Division determines that continuing the guardianship is necessary for the child's well-being. MCR 5.404(E)(3)(b).

Limited guardianship placement plans. A limited guardianship placement plan is a consensual arrangement that is agreed to by the custodial parent, the proposed limited guardian, and the judge of the Probate Court who is assigned to the case. MCL 700.5205(2) and MCL 700.5206(1).

A limited guardian has all the powers and duties of a "full" guardian, except that a limited guardian may not consent to the ward's adoption, release the ward for adoption, or consent to the ward's marriage. MCL 700.5206(4). A limited guardianship differs from a "full" guardianship in that the limited guardianship is initiated by a custodial parent, and the limited guardianship may be terminated at any time by the custodial parent if he or she has "substantially complied" with the limited guardianship placement plan. MCL 700.5205(1), MCL 700.5206(3), MCL 700.5208(1), and MCL 700.5209(1). However, if the parent substantially fails, without good cause, to comply with the limited guardianship placement plan, then the Family Division may assume jurisdiction over the child in a child protective proceeding. MCL 712A.2(b)(3). The limited guardianship placement plan form must contain a notice that informs the parent that substantial failure to comply with the plan without good cause may result in termination of the parent's parental rights. MCL 700.5205(2).

The limited guardianship placement plan must include provisions concerning all of the following:

> "(a) The reason the parent or parents are requesting the court to appoint a limited guardian for the minor.
>
> "(b) Parenting time and contact with the minor by his or her parent or parents sufficient to maintain a parent and child relationship.
>
> "(c) The duration of the limited guardianship.
>
> "(d) Financial support for the minor.
>
> "(e) Any other provisions that the parties agree to include in the plan." MCL 700.5205(2)(a)–(e). See also MCR 5.404(B)(1), which contains substantially similar requirements.

Court-structured guardianship placement plans. A petition for a "full" guardianship* may be filed by any person interested in the welfare of the child, or by the child if he or she is 14 years of age or older. MCL 700.5204(1) and MCR 5.402(B). A "full" guardian may be appointed if the Probate Court finds that any of the following statutory criteria have been met:

*The term "full" guardian is not contained in the statute but is used here to distinguish it from a limited guardianship.

> "(a) The parental rights of both parents or the surviving parent are terminated or suspended by prior court order,

> by judgment of divorce or separate maintenance, by death, by judicial determination of mental incompetency, by disappearance, or by confinement in a place of detention.
>
> "(b) The parent or parents permit the minor to reside with another person and do not provide the other person with legal authority for the minor's care and maintenance, and the minor is not residing with his or her parent or parents when the petition is filed.
>
> "(c) All of the following:
>
> > (*i*) The minor's biological parents have never been married to one another.
> >
> > (*ii*) The minor's parent who has custody of the minor dies or is missing and the other parent has not been granted legal custody under court order.
> >
> > (*iii*) The person whom the petition asks to be appointed guardian is related to the minor within the fifth degree by marriage, blood, or adoption." MCL 700.5204(2)(a)–(c).

Probate Court review. If the Probate Court grants a petition for a "full" or "limited guardianship," then the Probate Court may review the guardianship at any time it considers necessary, and must review it annually if the child is under six years of age. MCL 700.5207. Upon completion of the review, the Probate Court may order the parties to modify a limited guardianship placement plan as a condition of continuing a limited guardianship, or to follow a court-structured guardianship plan designed to resolve the conditions identified at the review hearing. MCL 700.5207(3)(b). The contents of the court-structured guardianship plan shall include all of the same provisions required for a limited guardianship placement plan. See MCR 5.404(B).

MCL 712A.2(b)(4) provides that the Family Division has jurisdiction over a child protective proceeding if the parent substantially fails, without good cause, to comply with a court-structured guardianship plan.

> **Note:** Although it is not specifically required by statute, the court-structured plan should contain a notice to the parents that failure to comply with the plan may result in the termination of their parental rights.

In *In re Zimmerman,* 264 Mich App 286 (2004), DHS filed a petition and a request to place one of respondent-mother's children, Kaleb, in protective custody. The petition alleged that the conditions leading to the prior filing of a neglect petition concerning respondent's other two children had not been rectified. The parties agreed to participate in Kent County's Kinship Program.* Under the program, respondent consented to the filing of the petition with the understanding that Kaleb would be placed with the child's paternal grandmother and a guardianship would be established. The parties agreed to a "family plan," similar to a case service plan, and, following establishment of the guardianship, DHS requested that the neglect petition concerning Kaleb be dismissed. A similar procedure was used under the program regarding one of respondent's other children, Brendan. The court dismissed both petitions concerning these two children, but respondent failed to comply with the family plan in both cases, and the guardians filed supplemental petitions requesting termination of parental rights.

*See Section 8.2 for a brief description of this program.

On appeal, respondent argued that the referee erred in finding that the court had jurisdiction under MCL 712A.2. Respondent contended that no grounds for jurisdiction existed because the neglect petitions regarding the two children had been dismissed after the guardianships were established, and placement with the guardians meant that the children were not "without proper custody or guardianship" under MCL 712A.2(b)(1)(B).* The Court of Appeals rejected these arguments, noting that although the original neglect petitions had been dismissed, respondent was still subject to the requirements of the family plan and substantially failed to comply with those requirements. Thus, the Court concluded, jurisdiction was proper under MCL 712A.2(b)(4). *Zimmerman, supra* at 294–96.

*See Section 4.10, above, for discussion of this statutory provision.

Failure to support or communicate with a child who has a guardian. MCL 712A.2(b)(5) provides that the Family Division may assume jurisdiction in a protective proceeding if the child has a guardian, and the child's parent:

- having the ability to support or assist in supporting the child, has failed or neglected, without good cause, to provide regular and substantial support for the child for two years or more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for two years or more before the filing of the petition, and

- having the ability to visit, contact, or communicate with the child, has regularly and substantially failed or neglected, without good cause, to do so for two years or more before the filing of the petition.

Note: This statutory provision overlaps with MCL 712A.2(b)(3)–(4) because conduct that meets the requirements for jurisdiction under subsection (5) will also meet the requirements for jurisdiction under those subsections as well.

That is, if a parent fails to visit and support his or her child for two years, then the parent will have clearly violated the terms of the guardianship. Therefore, it is unlikely that §2(b)(5) of the Juvenile Code will be used very often as a grounds for taking jurisdiction of a child.

Although there is no case law construing §2(b)(5), several cases have dealt with MCL 710.51(6)(a)–(b), the "step-parent adoption" provision of the Adoption Code, which contains very similar language.*

*See Warner, *Adoption Proceedings Benchbook* (MJI, 2003), Section 2.13(B), for discussion of these cases. Note that MCL 710.51(6) does not permit a failure to comply with the provisions for "good cause," as does MCL 712A.2(b)(5).

4.13 Waiver of Jurisdiction in Divorce Proceedings

The Family Division may obtain jurisdiction of a child protective proceeding where the Circuit Court, in a divorce proceeding, has previously waived jurisdiction over the child:

- in a temporary order for custody or upon a motion by the prosecuting attorney;
- in a divorce judgment dissolving a marriage between the child's parents; or
- by an amended judgment relative to the custody of the child in a divorce.

MCL 712A.2(c).

*See Section 4.14, below, for an explanation of notice requirements.

Nonetheless, if an order for jurisdiction has been entered in the divorce case, waiver of that jurisdiction is not necessary to allow the Family Division to fully exercise its jurisdiction of protective proceedings. *Krajewski v Krajewski,* 420 Mich 729, 732–34 (1984), and MCR 3.205(A).* If, however, the court with jurisdiction of the divorce proceeding does waive jurisdiction, it must hold a hearing and make a preliminary finding that the child is abused or neglected. *In re Robey,* 136 Mich App 566, 572–74 (1984). After waiver, the court with jurisdiction of the protective proceeding must comply with the petition requirements in the Juvenile Code. Waiver does not automatically confer jurisdiction in the protective proceeding but acts only to provide the court with information upon which the court may authorize the filing of a petition. *Id.* at 578–79. See MCL 712A.11(1) (after a person gives information to the court concerning a child, the court may conduct a preliminary inquiry to determine an appropriate course of action).

Whenever practicable, two or more matters within the Family Division's jurisdiction pending *in the same judicial circuit* and involving members of the same family must be assigned to the judge who was assigned the first matter. MCL 600.1023.

4.14 Procedures for Handling Cases When Child Is Subject to Prior or Continuing Jurisdiction of Another Court in Michigan

If a petition is filed in the Family Division alleging that the court has jurisdiction over the child under MCL 712A.2(b) and the custody of the child is subject to the prior or continuing order of another court of record of this state, the manner of the required notice and the authority of the Family Division to proceed are governed by court rule. MCL 712A.2(b). See, generally, *In re Brown,* 171 Mich App 674, 676–77 (1988) (where custody of respondent's children was previously awarded to respondent in a divorce proceeding, the Probate Court did not err in taking jurisdiction over respondent's children, after giving the required notice to the Circuit Court, on grounds that their home was unfit).

MCR 3.927 provides that the manner of notice to the other court and the authority of the Family Division to proceed are governed by MCR 3.205. A waiver or transfer of jurisdiction is not required for the full and valid exercise of jurisdiction by the subsequent court. MCR 3.205(A) and *In re DeBaja,* 191 Mich App 281, 288–91 (1991) (because the notice requirements are procedural, not jurisdictional, a failure to give notice does not deprive a court of jurisdiction). The plaintiff or other initiating party must mail written notice of proceedings to:

> "(a) the clerk or register of the prior court, and
>
> "(b) the appropriate official of the prior court." MCR 3.205(B)(2)(a)–(b).

The "appropriate official" means the Friend of the Court, juvenile officer, or prosecuting attorney, depending on the type of proceeding. MCR 3.205(B)(1).

> **Note:** Although MCR 3.205(B) states that the plaintiff or other initiating party must mail the required notice, as a practical matter, the deputy register often sends the notice. See SCAO Form MC 28, which requires the signature of the court clerk, register, or deputy register.

The notice must be mailed at least 21 days before the date set for hearing, except that if the fact of continuing jurisdiction is not then known, notice must be given immediately when it becomes known. MCR 3.205(B)(3). The notice requirement is not jurisdictional and does not preclude the subsequent court from entering interim orders before the 21-day period ends if it is in the best interests of the minor. MCR 3.205(B)(4). See also *Krajewski v Krajewski,* 420 Mich 729, 734 (1984) (subsequent court may enter temporary or permanent orders).

Upon receipt of notice, the appropriate official of the prior court:

> "(a) must provide the subsequent court with copies of all relevant orders then in effect and copies of relevant records and reports, and
>
> "(b) may appear in person at proceedings in the subsequent court, as the welfare of the minor and the interests of justice require." MCR 3.205(D)(1)(a)–(b).

MCR 3.205(D)(2)(a)–(b) state:

> "(2) Upon request of the prior court, the appropriate official of the subsequent court:
>
> > (a) must notify the appropriate official of the prior court of all proceedings in the subsequent court, and
> >
> > (b) must send copies of all orders entered in the subsequent court to the attention of the clerk or register and the appropriate official of the prior court."

MCR 3.205(C)(1)–(2) state:

> "(1) Each provision of a prior order remains in effect until the provision is superseded, changed, or terminated by a subsequent order.
>
> "(2) A subsequent court must give due consideration to prior continuing orders of other courts, and a court may not enter orders contrary to or inconsistent with such orders, except as provided by law."

Upon receipt of an order from the subsequent court, the appropriate official of the prior court must take necessary steps to implement the order in the prior court. MCR 3.205(D)(4). A Family Division with jurisdiction of a child protective proceeding may issue orders contradicting those issued in a prior, continuing divorce proceeding. *In re Foster,* 226 Mich App 348, 353–57 (1997). Following the events described in *Foster, supra,* the Family Division terminated the respondent-parents' rights and committed the child to the Michigan Children's Institute. The child's grandmother then filed a motion for custody of the child. Thereafter, the circuit court ruled that it no longer had jurisdiction over the custody matter. *In re Foster,* 237 Mich App 259, 262 (1999). The Court of Appeals upheld the circuit court's decision, noting that both the order terminating parental rights and the order denying custody to the grandmother came from the Family Division. The order terminating parental rights superseded all prior custody orders.

4.15 Procedures for Handling Interstate Cases

In 2002, the Michigan Legislature adopted the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101 et seq., and repealed the Uniform Child Custody Jurisdiction Act, MCL 600.651 et seq. MCL 722.1406(1). The UCCJEA took effect April 1, 2002. MCL 722.1406(2).

The UCCJEA governs procedures in "child-custody proceedings" when one or both of a child's parents reside outside of Michigan. It also provides for enforcement and modification of out-of-state custody decrees, judgments, or orders. The UCCJEA contains provisions regarding filing and registering a state's custody decrees, judgments, and orders; communication between courts of different states; petition requirements; notice and service of process; evidence; and enforcement of another state's decree, judgment, or order. This section provides general guidance as to when a Michigan court may exercise jurisdiction in a child protective proceeding under the UCCJEA. For a more complete discussion of interstate and international proceedings, see Lovik, *Domestic Violence Benchbook: A Guide to Civil & Criminal Proceedings (3d ed)* (MJI, 2004), Chapter 13.

A "child-custody proceeding" is defined in MCL 722.1102(d) as follows:

> "'Child-custody proceeding' means a proceeding in which legal custody, physical custody, or parenting time with respect to a child is an issue. Child-custody proceeding includes a proceeding for divorce, separate maintenance, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. Child-custody proceeding does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under [MCL 722.1301 et seq.]."*

*The UCCJEA does not apply to adoption proceedings or proceedings regarding authorization of emergency medical care for a child. MCL 722.1103. See Sections 2.1(B) and 3.7 for discussion of ordering emergency medical treatment for a child.

Note: An interstate proceeding involving an Indian child is governed by the Indian Child Welfare Act. See Chapter 20. However, Indian tribes of other states are treated as states for purposes of the UCCJEA. MCL 722.1104(1)–(2). An Indian tribe's custody determination must be recognized and enforced under the UCCJEA if it was made in substantial conformity with the UCCJEA. MCL 722.1104(3).

Filing a child support complaint under the Uniform Interstate Family Support Act (UIFSA), MCL 552.1101 et seq., does not constitute initiation of a "child custody proceeding" under the UCCJEA. *Fisher v Belcher,* 269 Mich App 247, 256–59 (2005). In *Fisher*, the Court noted that the definition of "child custody proceeding" in MCL 722.1102(d) does not include support actions, and that the definition of "child custody determination" in

MCL 722.1102(c) specifically precludes "order[s] relating to child support . . . ." Thus, because the support action filed in Michigan was not a "child custody proceeding," and because a paternity action and request for custody was filed in Missouri, the Michigan court properly dismissed the petition for jurisdiction under the UCCJEA pursuant to MCL 722.1206(2). *Fisher, supra* at 256–57.

A Michigan court may exercise its jurisdiction of a "child-custody proceeding" if it has one of the following:

- "home state" jurisdiction;
- "significant connection" jurisdiction (if no other state has "home state" jurisdiction, or if the child's "home state" has declined jurisdiction);
- "last resort" jurisdiction (if no other state has "home state" or "significant connection" jurisdiction, or if all courts having jurisdiction have declined jurisdiction); or
- "temporary emergency" jurisdiction.

The physical presence of or a Michigan court's personal jurisdiction over a child or other party does not guarantee that a Michigan court has jurisdiction of a child-custody proceeding under the UCCJEA. MCL 722.1201(3).

"Home state" jurisdiction. The UCCJEA gives priority to "home state" jurisdiction. If Michigan has "home state" jurisdiction under the UCCJEA, it may make an initial child-custody determination. MCL 722.1201(1)(a) states:

> "(1) Except as otherwise provided in [MCL 722.1204, dealing with "temporary emergency" jurisdiction], a court of this state has jurisdiction to make an initial child-custody determination only in the following situations:
>
> > (a) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state."

MCL 722.1102(g) defines "home state" as follows:

> "'Home state' means the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child-custody proceeding. In the

> case of a child less than 6 months of age, the term means the state in which the child lived from birth with a parent or person acting as a parent. A period of temporary absence of a parent or person acting as a parent is included as part of the period."

"Person acting as a parent" means a person who meets both of the following criteria:

> "(*i*) Has physical custody of the child or has had physical custody for a period of 6 consecutive months, including a temporary absence, within 1 year immediately before the commencement of a child-custody proceeding.
>
> "(*ii*) Has been awarded legal custody by a court or claims a right to legal custody under the law of this state." MCL 722.1102(m)(*i*)–(*ii*).

"Significant connection" jurisdiction. If another state does not have "home state" jurisdiction, or if another state does have "home state" jurisdiction but declines to exercise that jurisdiction because Michigan is a more convenient forum, Michigan may exercise jurisdiction to make an initial child custody determination under certain circumstances. MCL 722.1201(1)(b) states:

> "(1) Except as otherwise provided in [MCL 722.1204, dealing with "temporary emergency" jurisdiction], a court of this state has jurisdiction to make an initial child-custody determination only in the following situations:
>
> * * *
>
> (b) A court of another state does not have jurisdiction under subdivision (a), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under [MCL 722.1207 or MCL 722.1208], and the court finds both of the following:
>
> (*i*) The child and the child's parents, or the child and at least 1 parent or a person acting as a parent, have a significant connection with this state other than mere physical presence.
>
> (*ii*) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships."

The phrase "significant connection" is not defined in the UCCJEA. In deciding whether to exercise "significant connection" jurisdiction under the former UCCJA, Michigan courts looked to factors such as duration of the child's stay in a state, extended family members living in a state, school enrollment, and location of health care providers. See, e.g., *Farrell v Farrell*, 133 Mich App 502, 509 (1984), and *Dean v Dean*, 133 Mich App 220, 226 (1984).

"Last resort" jurisdiction. If all courts having either "home state" or "significant connection" jurisdiction of a proceeding have declined jurisdiction because Michigan is a more convenient forum, or if no other state has jurisdiction, a Michigan court may exercise its jurisdiction to make an initial child-custody determination. MCL 722.1201(c)–(d).

"Temporary emergency" jurisdiction. Michigan may obtain "temporary emergency" jurisdiction if a child is present in this state and is abandoned, or if a child, the child's sibling, or the child's parent "is subjected to or threatened with mistreatment or abuse." MCL 722.1204(1). A Michigan court may issue an order to take a child into custody if it appears likely that a child will suffer imminent physical harm or will imminently be removed from the state. MCL 722.1310. If a proceeding has been commenced in or a custody determination has been made by another state's court, a Michigan court's order must specify a time period during which it will remain in effect. The time period must be adequate to allow a person to seek an order from the other state's court. MCL 722.1204(3). In such circumstances, the Michigan court must immediately communicate with a court in the other state in order to "resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order." MCL 722.1204(4).

Deferring jurisdiction to another state's court. Except for "temporary emergency" jurisdiction, a Michigan court may not exercise jurisdiction under the UCCJEA if, at the time of the commencement of the proceeding in Michigan, a child-custody proceeding has been commenced in another state. MCL 722.1206(1) states:

> "Except as otherwise provided in [MCL 722.1204, dealing with "temporary emergency" jurisdiction], a court of this state may not exercise its jurisdiction under this article if, at the time of the commencement of the proceeding, a child-custody proceeding has been commenced in a court of another state having jurisdiction substantially in conformity with this act, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under [MCL 722.1207]."

A child-custody proceeding is commenced upon the filing of the first pleading. MCL 722.1102(e). If a Michigan court determines that a child-

custody proceeding has been commenced in a court of another state, the Michigan court must stay its proceeding and communicate with the other court. If the other court does not determine that the Michigan court is a more convenient forum, the Michigan court must dismiss its proceeding. MCL 722.1206(2). If the other court stays its proceeding because the Michigan court is a more convenient forum, or because temporary action is necessary, the Michigan court may exercise its jurisdiction of the case. *Id.*

Modifying another state's decree, judgment, or order. A Michigan court shall not modify another state's decree, judgment, or order unless the Michigan court has "home state" or "significant connection" jurisdiction, and either:

- the other court no longer has jurisdiction, or
- the other court has determined that Michigan would be a more convenient forum, or neither the child, nor the child's parent, nor a person acting as a child's parent currently resides in the other state. MCL 722.1203(a)–(b).

Continuing jurisdiction. With the exception of "temporary emergency" jurisdiction, once a Michigan court exercises jurisdiction under the UCCJEA to make an initial child custody determination or to modify another state's determination, it retains jurisdiction until the Michigan court determines that the criteria for "significant connection" jurisdiction are no longer satisfied, or that neither the child, nor the child's parent, nor a person acting as a child's parent currently reside in Michigan. MCL 722.1202(1)(a)–(b). However, a Michigan court may subsequently decline to exercise jurisdiction if it determines that it is an inconvenient forum. MCL 722.1202(2).

Declining jurisdiction because another state is a more convenient forum. A court may decline to exercise its jurisdiction under the UCCJEA if it finds that another state is a more convenient forum. MCL 722.1207(1). "The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or the request of another court." *Id.* To determine the appropriateness of a forum, a court must consider all relevant factors, including all of the following:

> "(a) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child.
>
> "(b) The length of time the child has resided outside this state.
>
> "(c) The distance between the court in this state and the court in the state that would assume jurisdiction.

> "(d) The parties' relative financial circumstances.
>
> "(e) An agreement by the parties as to which state should assume jurisdiction.
>
> "(f) The nature and location of the evidence required to resolve the pending litigation, including the child's testimony.
>
> "(g) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence."

See *Breneman v Breneman,* 92 Mich App 336, 342 (1979) (it is appropriate to have a judge who presided over the original custody proceedings preside over petitions for modification of a custody order).

4.16 Continuation of Family Division Jurisdiction After Child Becomes 18 Years of Age

If the Family Division has exercised personal jurisdiction over a child pursuant to MCL 712A.2(b) prior to the child's 18th birthday, jurisdiction may continue until the child reaches age 20, or the court may terminate jurisdiction before that time. MCL 712A.2a(1).

The term "child" is used to refer to a person alleged or found to be within the jurisdiction of the Family Division under MCL 712A.2(b), and the term "minor" may be used to describe a person over age 18 over whom the court has continuing jurisdiction. MCR 3.903(A)(15) and 3.903(C)(2).

If a child is placed in a foster home or foster care facility prior to his or her 18th birthday, that placement may continue after the child's 18th birthday. MCL 722.111(1)(k)(*ii*). If a child has been committed to the Michigan Children's Institute, the child may remain a state ward until his or her 19th birthday. MCL 400.203(a). If parental rights have been terminated, the court must continue to review the case while a child is in placement or under the jurisdiction, supervision, or control of the Michigan Children's Institute. MCL 712A.19c(1)–(2) and MCR 3.978(C).

MCR 3.978(D) states:

> "(D) *Termination of Jurisdiction.* The jurisdiction of the court in the child protective proceeding may terminate when a court of competent jurisdiction enters an order terminating the rights of the entity with legal custody and enters an order placing the child for adoption."*

*See Warner, *Adoption Proceedings Benchbook* (MJI, 2003), Section 6.1.

4.17 Family Division Jurisdiction and Authority Over Adults

Under MCL 712A.6, the Family Division has jurisdiction over adults and may make orders affecting adults as in the opinion of the court are necessary for the physical, mental, or moral well-being of a particular child or children under its jurisdiction. However, those orders must be incidental to the jurisdiction of the court over the child or children (i.e., the orders must be entered after the court has taken jurisdiction over the child following plea or trial). *Id.* The authority to fashion remedies under MCL 712A.6 extends beyond MCL 712A.18, which provides dispositional alternatives. *In re Macomber,* 436 Mich 386, 389–93, 398–400 (1990).*

*See Section 13.9(H).

The Family Division's authority over adults is greater under two other provisions of the Juvenile Code. MCL 712A.13a(4)–(5) give the court authority to order a parent, "nonparent adult," or other person out of the child's home before trial if the petition contains allegations of abuse. In addition, MCL 712A.6b gives the court the authority to enter orders affecting "nonparent adults." The court's authority under §6b does not affect its jurisdiction or authority under §6.*

*See Sections 7.13–7.15.

4.18 Family Division Jurisdiction of Contempt Proceedings

Authority. The Family Division has "the power to punish for contempt of court under [MCL 600.1701 et seq.] any person who willfully violates, neglects, or refuses to obey and perform any order or process the court has made or issued to enforce [the Juvenile Code]." MCL 712A.26. See also MCR 3.928(A) ("The court has the authority to hold persons in contempt of court as provided by MCL 600.1701 and 712A.26"). Courts have inherent authority to conduct contempt proceedings. *In re Huff,* 352 Mich 402, 415–16 (1958) ("Such power, being inherent and a part of the judicial power of constitutional courts, cannot be limited or taken away by act of the legislature nor is it dependent on legislative provision for its validity or procedures to effectuate it"), *In re Summerville,* 148 Mich App 334, 339–41 (1986) (the "juvenile court" had inherent authority to initiate contempt proceedings after the juvenile reached age 19 for violation of the court's dispositional order), and *In re GB,* 430 NE2d 1096, 1098-99 (Ill, 1981) (violation of "family court's" order could be punished pursuant to its inherent contempt power rather than pursuant to the authority granted by the statutes governing juvenile proceedings). Although courts have inherent authority to punish for contempt, the legislature has authority to prescribe penalties for such contempt. *Cross Co v UAW Local No 155 (AFL-CIO),* 377 Mich 202, 223 (1966), and *In re Baker,* 376 NE 2d 1005, 1006-07 (Ill, 1978) (legislature may provide alternative enforcement provisions in contempt cases involving minors).

The Family Division may also enforce its reimbursement orders, MCL 712A.18(2) and (3), and orders assessing attorney costs, MCL 712A.17c(8), MCL 712A.18(5), and MCR 3.915(E), through its contempt powers. See, generally, *In re Reiswitz,* 236 Mich App 158, 172 (1999).

Procedure. MCR 3.928(B) provides that contempt of court proceedings are governed by MCL 600.1711, 600.1715, and MCR 3.606.*

*For a detailed discussion of procedural requirements in contempt cases, see *Contempt of Court Benchbook—Third Edition* (MJI, 2005).

4.19 Change of Venue

Venue is proper in child protective proceedings in the county where the child is found. MCL 712A.2(b). A child is "found within the county" where the offense against the child occurred or where the child is physically present. MCR 3.926(A). "Offense against a child" means an act or omission. MCR 3.903(C)(7).

MCR 3.926(D) states that venue may be changed upon motion of a party, and that all costs of the proceeding are to be borne by the Family Division that ordered the change of venue. Under MCR 3.926(D)(1)–(2), there are two circumstances allowing for change of venue:

> "(1) for the convenience of the parties and witnesses, provided that a judge of the other court agrees to hear the case; or
>
> "(2) when an impartial trial cannot be had where the case is pending."

As in a case that is transferred, the court ordering a change of venue shall send the original or certified copies of the record of the case to the receiving court without charge. MCR 3.926(F).

4.20 Transfer of Case to County of Residence

If a child is brought before the Family Division in a county other than the county in which he or she resides, the court may, before a hearing and with the consent of the Family Division judge of the child's county of residence, enter an order transferring jurisdiction over the matter to the court of the county of residence. In all cases, the order and a certified copy of the record of any proceedings in the case must be transferred to the court of the county or circuit of residence without charge. MCL 712A.2(d) and MCR 3.926(F). MCR 3.926(B) adds that transfer must occur before trial.

Criteria to determine county of residence. MCR 3.926(B)(1)–(3) contain criteria to determine a child's county of residence. These rules state as follows:

> "(1) If both parents reside in the same county, or if the child resides in the county with a parent who has been awarded legal custody, a guardian, a legal custodian, or the child's sole legal parent, that county will be presumed to be the county of residence.
>
> "(2) In circumstances other than those enumerated in subsection (1) of this section, the court shall consider the following factors in determining the child's county of residence:
>
> (a) The county of residence of the parent or parents, guardian, or legal custodian.
>
> (b) Whether the child has ever lived in the county, and, if so, for how long.
>
> (c) Whether either parent has moved to another county since the inception of the case.
>
> (d) Whether the child is subject to the prior continuing jurisdiction of another court.
>
> (e) Whether a court has entered an order placing the child in the county for the purpose of adoption.
>
> (f) Whether the child has expressed an intention to reside in the county.
>
> (g) Any other factor the court considers relevant.
>
> "(3) If the child has been placed in a county by court order, or by placement by a public or private agency, the child shall not be considered a resident of the county in which he or she has been placed, unless the child has been placed for purposes of adoption."

In *In re Zimmerman,* 264 Mich App 286 (2004), DHS filed a petition in Kent County, where both respondent-parent and child resided and the alleged neglect occurred. After the child was placed in a guardianship with a relative in Isabella County, the court dismissed the petition. When the parent failed to comply with a "family plan," the guardian filed a supplemental petition in Kent County requesting termination of parental rights. The respondent moved to transfer the case to Isabella County, arguing that the child was not "found within" Kent County when the guardian filed the supplemental petition. The Court of Appeals concluded that the referee properly denied the respondent's motion to transfer the case. MCR 3.926(A) states that a child is "found within the county" where the offense against the child occurred or where the child is present. Because the neglect alleged in the original petition occurred in Kent County, the child was properly "found

within" Kent County for purposes of the subsequent proceedings. Moreover, MCR 3.926(B)(3) states that a child is not a resident of a county in which he or she has been placed "by court order or by placement by a public or private agency." In addition, under MCR 3.926(B)(2), the referee properly considered ongoing child protective proceedings in Kent County involving the respondent's other children when denying the motion to transfer the case. *Zimmerman, supra* at 290–93.

Bifurcated proceedings. In addition to transfer of a case before adjudication, MCR 3.926(E) provides for bifurcated proceedings, with adjudication occurring in one court and disposition occurring in another court. That rule states as follows:

> "If the judge of the transferring court and the judge of the receiving court agree, the case may be bifurcated to permit adjudication in the transferring court and disposition in the receiving court. The case may be returned to the receiving court immediately after the transferring court enters its order of adjudication."

In bifurcated cases, the court that enters an order of adjudication must send "any supplemented pleadings and records or certified copies of the supplemented pleadings and records to the court entering the disposition in the case." MCR 3.926(F).

4.21 Responsibility for Costs of Disposition

MCR 3.926(C)(1) provides that when disposition is ordered by a Family Division other than the Family Division in a county where the child resides, the court ordering disposition is responsible for any costs incurred in connection with the order unless the court in the county where the child resides agrees to pay such dispositional costs.